

² The Board notes that OWCP received additional evidence following the June 9, 2021 merit decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Security Administration (SSA) age-related retirement benefits while also receiving FECA wage-loss compensation without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

FACTUAL HISTORY

On July 6, 1990 appellant, then a 38-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained multiple injuries when attacked from behind by an unknown female assailant when loading her mail pouch while in the performance of duty. She stopped work on the date of injury. A July 25, 1990 nonfatal summary (NFS) notes appellant's retirement plan code as "K," indicating her enrollment in the Federal Employees Retirement System (FERS) and Federal Insurance Contribution Act. On July 31, 1990 OWCP accepted the claim for multiple abrasions. Appellant remained off work and OWCP paid her total disability compensation through April 17, 1991. She returned to full-time restricted duty on April 18, 1991. On January 7, 1994 OWCP accepted a recurrence of disability.

On May 18, 1995 OWCP expanded acceptance of the claim to include displacement of lumbar intervertebral disc, a cervical disc bulge, and a lumbar sprain. It subsequently expanded acceptance of the claim to include adjustment disorder with depressed mood.

Following a period of intermittent, part-time light-duty work, appellant retired from the employing establishment effective September 17, 1998.³ OWCP paid wage-loss compensation benefits on the periodic rolls.⁴

On December 3, 2013 OWCP issued a letter advising appellant to notify OWCP upon her receipt of SSA retirement benefits. It related that section 8116(d)(2) of FECA (5 U.S.C. § 8116(d)(2)) required that a claimant's continuing compensation benefits be reduced if he or she began receiving SSA retirement benefits based on his or her age and federal service. OWCP noted that it was notifying appellant of this requirement as she had recently attained 62 years of age, the minimum age at which an individual is eligible to receive SSA retirement benefits. It noted that failure to report receipt of such retirement benefits to OWCP could result in an overpayment of compensation, which could be subject to recovery. Consequently, if appellant had been approved for SSA retirement benefits, or were currently receiving SSA retirement benefits, to contact OWCP immediately so that it could begin the process of making any necessary adjustments to her compensation benefits.

On January 7, 2021 OWCP provided SSA with a dual benefits calculation form. It listed the computation period as November 22, 2013 to present. On March 11, 2021 OWCP received the completed FERS/SSA dual benefits calculation form, wherein SSA calculated SSA benefit rates with a FERS offset and without a FERS offset from November 2017 through December 2020.

³ On April 20, 1999 OWCP granted appellant a schedule award for 29 percent permanent impairment of the right upper extremity and 33 percent permanent impairment of the right lower extremity. The period of the award ran for 185.52 weeks from June 2, 1997 through December 21, 2000. OWCP subsequently reinstated appellant on the periodic rolls.

⁴ On March 2, 2012 OWCP changed appellant's status code to PN, entitled to payment on periodic rolls as she remained totally disabled and her condition was "not expected to improve."

Beginning November 2017, the SSA rate with FERS was \$1,174.00 and without FERS was \$624.10. Beginning December 2017, the SSA rate with FERS was \$1,197.40 and without FERS was \$636.50. Beginning December 2018, the SSA rate with FERS was \$1,230.90 and without FERS was \$654.30. Beginning December 2019, the SSA rate with FERS was \$1,250.50 and without FERS was \$664.70. Beginning December 2020, the SSA rate with FERS was \$1,266.70 and without FERS was \$673.30.

On May 7, 2021 OWCP prepared a FERS offset calculation based on the SSA documentation wherein it noted the calculation of appellant's overpayment from November 1, 2017 through April 24, 2021. It determined that, during the period November 1 through 30, 2017, she received an overpayment in the amount of \$543.86. For the period December 1, 2017 through November 30, 2018, appellant received an overpayment in the amount of \$6,749.29. For the period December 1, 2018 through November 30, 2019, she received an overpayment in the amount of \$6,938.21. For the period December 1, 2019 through November 30, 2020, appellant received an overpayment in the amount of \$7,068.22. For the period December 1, 2020 through April 24, 2021, she received an overpayment in the amount of \$2,836.58. The total overpayment was determined to be \$24,136.16.

In a letter dated May 7, 2021, OWCP advised appellant that she had been receiving a prohibited dual benefit. It noted that the SSA had confirmed that a portion of her SSA age-related retirement benefits were attributed to her years of federal service as an employee under FERS and that portion required an offset of her FECA compensation benefits, in the amount of \$593.40 every 28 days. OWCP indicated that, to account for her SSA offset, appellant's FECA wage-loss compensation would be adjusted to reflect a new net compensation amount of \$2,494.25 effective April 25, 2021.

On May 7, 2021 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$24,136.16 had been created because the FERS/SSA offset was not applied to payments for the period November 1, 2017 through April 24, 2021 for this period. It determined that appellant was without fault in the creation of the overpayment. OWCP requested that she submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable repayment method and advised her that she could request a waiver of recovery of the overpayment. It further requested financial information, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support income and expenses. OWCP advised appellant that it would deny waiver if she failed to furnish the requested financial information within 30 days. It provided an overpayment action request form and further notified her that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a precoupment hearing. Appellant did not respond.

By decision dated June 9, 2021, OWCP finalized the May 7, 2021 preliminary overpayment determination that appellant had received an overpayment of compensation in the amount of \$24,136.16 because it had failed to offset her compensation payments for the period November 1, 2017 through April 24, 2021 by the portion of her SSA benefits that were attributable to federal service. It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because the evidence of record failed to establish that recovery of an overpayment would defeat the purpose of FECA as she had not responded to

the request for financial information. OWCP further found that recovery of the overpayment would not be against equity and good conscience as appellant had not shown that she would experience severe financial hardship in attempting to repay the debt, and that she had not asserted detrimental reliance. It directed recovery of the overpayment by lump sum payment of \$24,136.16. Appellant was advised by OWCP that if she was unable to refund the entire amount that she should contact OWCP if she wished to enter into an installment payment program.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁵ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁶

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related benefits that are attributable to federal service of the employee.⁷ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$24,136.16 for the period November 1, 2017 through April 24, 2021, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation without an appropriate offset.

As noted, a claimant cannot receive concurrent FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁹ The information provided by SSA established that appellant had received SSA age-related retirement benefits that were attributable to her federal service from November 1, 2017 through April 24, 2021. Consequently, the fact of overpayment has been established.

⁵ 5 U.S.C. § 8102(a).

⁶ *Id.* at § 8116.

⁷ 20 C.F.R. § 10.421(d); *E.R.*, Docket No. 21-0133 (issued November 15, 2021); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁸ FECA Bulletin No. 97-09 (issued February 3, 1997).

⁹ *See supra* note 8; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided age-related retirement benefits rates with and without FERS during the specific period November 1, 2017 through April 24, 2021. OWCP provided its calculation for each relevant period based on a FERS offset calculation worksheet.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period November 1, 2017 through April 24, 2021 and finds that an overpayment of compensation in the amount of \$24,136.16 was created.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."¹⁰ Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹¹

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹²

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for

¹⁰ 5 U.S.C. § 8129.

¹¹ 20 C.F.R. § 10.438.

¹² *Id.* at §§ 10.434-10.437.

¹³ *Id.* at § 10.436.

¹⁴ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2020).

each additional dependent.¹⁵ An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

As OWCP found appellant without fault in the creation of the overpayment, waiver of recovery of the overpayment must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP, but failed to do so.¹⁸

In its preliminary overpayment determination dated May 7, 2021, OWCP explained the importance of providing the completed Form OWCP-20 along with supporting financial documentation. It advised appellant that it would deny waiver of recovery if she failed to furnish the requested financial information within 30 days. Appellant did not respond. As she did not submit a completed Form OWCP-20 with supporting financial documentation of her income, assets, and expenses, OWCP could not determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁹

Accordingly, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP's regulations to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment of compensation.

On appeal, appellant contends that recovery of the overpayment would create financial hardship as she remained totally disabled due to both occupational and nonoccupational conditions. As noted above, she did not submit the financial information necessary for OWCP to consider waiver of recovery of the overpayment.

¹⁵ *Id.* at Chapter 6.400.4a(2).

¹⁶ *Id.* at Chapter 6.400.4b(3)(a), (b).

¹⁷ 20 C.F.R. § 10.436.

¹⁸ *Id.* at § 10.438.

¹⁹ *P.N.*, Docket No. 20-1159 (issued April 20, 2021); *see S.W.*, Docket No. 20-0544 (issued September 21, 2020).

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$24,136.16 for the period November 1, 2017 through April 24, 2021, for which she was without fault, because she concurrently received SSA age-related retirement benefits while also receiving FECA benefits without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment.²⁰

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

²⁰ With respect to the recovery of an overpayment, the Board's jurisdiction is limited to those cases where OWCP seeks recovery from continuing compensation benefits. *D.J.*, Docket No. 19-1163 (issued September 22, 2020); *J.R.*, Docket No. 19-1418 (issued March 4, 2020). As OWCP did not direct recovery from appellant's continuing compensation benefits, the Board does not have jurisdiction over the method of recovery of the overpayment in this case. 20 C.F.R. § 10.441(a).